

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DREW HERIOT and
DREW PICTURES PTY LTD.,

Plaintiffs,

vs.

RHONDA BYRNE, THE SECRET LLC
(AKA TS HOLDINGS LLC), PRIME TIME
US INC., TS PRODUCTION HOLDINGS
LLC, TS PRODUCTION LLC,
TS MERCHANDISING LTD., and
ROBERT E. RAINONE, JR.,

Defendants.

Civil Case No. 08CV2272

The Honorable Suzanne B. Conlon

**DEFENDANTS' MOTION TO DISMISS OR,
IN THE ALTERNATIVE, TO STAY PROCEEDINGS**

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Attorneys for Defendants
RHONDA BYRNE, TS RER LLC
(erroneously named as "THE SECRET LLC"
and "TS HOLDINGS LLC"), PRIME TIME
US INC., TS PRODUCTION HOLDINGS
LLC, TS PRODUCTION LLC,
TS MERCHANDISING LTD., and
ROBERT E. RAINONE, JR.

Defendants Rhonda Byrne, The Secret LLC (aka TS Holdings LLC), Prime Time US Inc., TS Production Holdings LLC, TS Production LLC, TS Merchandising Ltd., and Robert E. Rainone, Jr. (“Defendants”), by their attorneys, hereby move this Court to dismiss this action under the doctrine of *forum non conveniens*, or, in the alternative, to dismiss or stay the action under the abstention doctrine in light of preexisting, parallel litigation in the Federal Court of Australia, and/or to dismiss all claims by plaintiff Drew Heriot (“Heriot”) and all claims against defendant Robert Rainone pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. In support of their motions, Defendants state as follows:

1. On October 18, 2007, defendant TS Production LLC commenced an action in the Australian Federal Court (the “Australian Action”) by filing a statement of claim, the equivalent of a complaint, against Plaintiffs here. The Australian Action seeks to determine TS Production LLC ownership of all rights, including copyrights, in the film *The Secret*. Plaintiffs have appeared in the Australian Action and are actively litigating it.

2. On April 21, 2008, more than five months after the Australian Action commenced, Plaintiffs filed the instant litigation, seeking to resolve the same disputes at issue in the Australian Action.

3. Plaintiff Drew Heriot is an Australian citizen. Plaintiff Drew Pictures Pty. Ltd. is an Australian company with its principal place of business in Ivanhoe, a suburb of Melbourne, Australia. Defendant Rhonda Byrnes is an Australian citizen. The vast majority of the production and creation of *The Secret* occurred in Australia.

4. This action should be dismissed under the doctrine of *forum non conveniens*. The Australian Federal Court, where litigation has now been pending for over seven months, provides an adequate alternative forum. The private and public interest factors that are considered in a *forum non conveniens* analysis strongly favor dismissal.

5. In the alternative, this court should dismiss or stay this case in light of the preexisting parallel Australian Action under the abstention doctrine, as provided in *Colorado*

River Conservation District v. U.S., 424 U.S. 800 (1976). The factors that a court considers when determining whether to abstain from exercising jurisdiction weigh strongly in favor of abstention.

6. In the further alternative, all claims asserted by plaintiff Heriot should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) because he pleads no claim in his own right and, therefore, lacks standing to sue.

7. In the further alternative, all claims asserted against defendant Robert Rainone, Jr. should be dismissed Federal Rule of Civil Procedure 12(b)(6) because Plaintiffs plead no claim against him.

8. A detailed explanation of the grounds for this Motion is set forth in Defendants' Memorandum of Points and Authorities in Support of Motion to Dismiss or, in the Alternative, to Stay Proceedings, and in the Declarations of Robert E. Rainone, Jr., Paul Harrington, Rhonda Byrne, Donald J. Zyck and Joseph A. Meckes and their accompanying exhibits, all of which are incorporated by reference herein.

WHEREFORE, for all the reasons set forth in the accompanying memorandum of law, Defendants respectfully request that the Court to dismiss the Complaint or stay all proceedings.

Dated: June 4, 2008

Respectfully submitted,

By: /s/ David S. Elkins

David S. Elkins

Attorneys for Defendants
RHONDA BYRNE, TS RER LLC
(erroneously named as "THE SECRET LLC"
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